IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3019 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVAM CINEMA MODASA

Versus

ADDITIONAL CHIEF SECRETARY

Appearance:

MR MB FAROOQUI for Petitioner

MR. K.T. DAVE, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner, proprietor of "Shivam" cinema hall at Modasa, has challenged the order dated 29.1.1999 (Annexure-E) passed by the Commissioner of Entertainment Tax dismissing the petitioner's revision application against order dated 5.7.1998 passed by the Entertainment Tax Collector by which order the Entertainment Tax Collector had confirmed the order dated

5.7.1996 of the Deputy Commissioner, Entertainment Tax, levying entertainment tax of Rs. 1,21,289/-, fine of Rs. 25,000/and composition fee of Rs. 2000/- under Section 18(b) of the Gujarat Entertainment Tax Act aggregating in all to Rs. 1,48,289/-.

2. At the time of hearing Mr. Farooqui, learned counsel for the petitioner submits that earlier checking had taken place at the same cinema hall on 13.5.1993 but nothing wrong was found. Hence while passing order dated 19.1.1994 in respect of the checking incident which took place on 11.6.1993, the Deputy Commissioner had considered only the period between 13.5.1993 and 11.6.1993 for computing tax. This was so because the period which was required to be considered was only after the date of last checking. However, by the impugned order dated 18.1.1996 the State Government took the matter in suo motu review and thereafter the aforesaid order came to be passed by the Deputy Commissioner, Entertainment tax, Gandhinagar and the State Government in appeal and revision respectively. The learned counsel for the petitioner has placed reliance on the decisions of this Court in Special Civil Application No. 9693 of 1996 decided by this Court on 16.12.1996 (Coram: Hon'ble Mr. Justice M.S. Parikh) and Special Civil Application No. 1005 of 1997 decided by this Court on 17.7.1997 (Coram: Hon'ble Mr. Justice R.K. Abichandani).

In the aforesaid Special Civil Applications this Court remanded the matter to the Revisional Authority on the short ground that the revisional authority had failed to consider that there was a previous checking and that the working of entertainment tax and penalty for the period prior to that date could not have been made. That contention had found favour with this Court and therefore, the Revisional authority was required to consider the petitioner's case in that respect.

Mr. Farooqui submits that in the instant case while passing the order on 19.1.1994 the Entertainment Tax Commissioner had considered the aforesaid aspect and since there was checking on different dates between 5.9.1992 and 12.5.1993 and the last checking had taken place on 12.5.1993, the question of assessment occasioned by the checking on 11.6.1993 was required to be made for the period between 13.5.1993 and 11.6.1993.

3. The learned counsel for the respondents is not in a position to dispute the aforesaid aspect.

4. In view of the above and following the decisions

of this Court in Special Civil Application Nos. 9693 of 1996 and 1005 of 1997, this petition is partly allowed and the matter is remanded to the Revisional authority for consideration of the revision, particularly the aforesaid contention and the principle laid down in the aforesaid orders of this Court.

The impugned order dated 29.1.1999 (Annexure-E) is accordingly quashed and set aside. The Revisional authority shall decide the revision application in accordance with law as expeditiously as possible and preferably within a period of three months from the date of receipt of the writ of this Court or a certified copy of this order whichever is earlier. The petitioner shall be given an opportunity of being heard on all grounds including the aforesaid ground.

5. The petition is partly allowed. Rule is made absolute to the above extent. There shall be no order as to costs.

(M.S. SHAH, J)

(pkn)